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**UNITED STATES DEPARTMENT OF COMMERCE
PATENT TRADEMARK OFFICE
Trademark Trial and Appeal Board**

Date April 8, 2002

Opposition No. 91150279

Dressler Foods

v.

Nutrition for Life
International, Inc.



04-09-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #73

Re: Request to Vacate Default Judgement

Dear Mr. McWilliams:

In response to your March 28, 2002 correspondence decision for notice of default entered against our client and applicant Nutrition For Life International, Inc., we believe that default should not be entered against applicant under Fed. R. Civ. P. 55(a). A Settlement Agreement was entered between Dressler Foods, Inc. and Nutrition For Life International Inc. whereby Provision 2.1 of the Agreement indicates that Dressler Foods, Inc will not oppose our application and executed a Release (Please find attachment enclosed and Exhibit A-Release). I already contacted opposing counsel to verify that Dressler Foods dismissed the Opposition and he indicated that he would do so immediately. Please advise if you need additional information to set aside or vacate the default. Thank you for your anticipated cooperation.

Respectfully Submitted,

Rakesh M. Amin

Rakesh M. Amin, Esq.
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**AGREEMENT BY AND BETWEEN NUTRITION FOR LIFE INTERNATIONAL, INC.
AND DRESSLER FOODS, INC.**

Effective as of the latter of the two execution dates below, Dressler Foods, Inc., a corporation organized and existing under the laws of Washington with its principal place of business at 184 Panorama Lane, Walla Walla, Washington 99362 ("Dressler Foods"), and Nutrition for Life International, Inc., corporation organized and existing under the laws of the State of Texas, with its principal place of business at 9101 Jameel, Houston, Texas 77040 ("Nutrition for Life"), agree as follows:

1. Background

- 1.1 Dressler Foods, Inc. is the owner of trademark for SOYGOOD or SOY GOOD, which it has used for many years and which is the subject of a pending United States trademark application, U.S. Trademark Application Serial No. 75/815,354 filed on October 26, 1999 for "soy-based liquid beverage or powdered beverage base used as a milk substitute".

Dressler Foods has been using the SOYGOOD mark in connection with the above goods in the United States itself and through a predecessor in interest since at least as early as 1998.
- 1.2 Nutrition for Life is the owner of U.S. Trademark Application Serial No. 75/790,878 filed September 2, 1999 for IT'SOY GOOD in International Class 5 for "dietary supplements" and International Class 30 for "soy-based snack foods and packaged meals consisting primarily of

soy, but specifically excluding non-dairy and soy-based frozen desserts and ice cream". The application is an intent-to-use trademark application.

- 1.3 The Nutrition for Life trademark application was published for opposition, and Dressler Foods filed a request of extension of time to file a notice of opposition in connection with the Nutrition for Life trademark application, and filed a notice of opposition on or about September 17, 2001.
- 1.4 Dressler Foods and Nutrition for Life desire to achieve a settlement in full of any and all controversies that presently exist or may hereafter arise concerning the parties' use of SOYGOOD and IT'SOY GOOD, including but not limited to Nutrition for Life's use of IT'SOY GOOD.
- 1.5 This Agreement shall also include the parties' use of SOYGOOD-formative marks.
- 1.6 As used in this Agreement, the term SOYGOOD-formative mark shall mean any mark composed of or containing the words SOY and GOOD and any mark similar thereto in phonetic pronunciation, visual appearance, meaning or overall commercial impression, including but not limited to IT'SOY GOOD. As used in this Agreement, the word "mark" shall have the same meaning ascribed to it in 15 U.S.C. §1127.
- 1.7 As used in this Agreement, the term "abandon" shall have the meaning ascribed to it in 15 U.S.C. §1127.

2. Undertakings by Dressler Foods

- 2.1 Dressler Foods shall not further object to, oppose or seek to cancel, based on the grounds set forth in 15 U.S.C. §1052(a) through (e) or in

similar laws or regulations regulating the use of trademarks in jurisdictions worldwide, Nutrition for Life's use and/or registration of the mark IT'SOY GOOD in accordance with this Agreement.

2.2 Dressler Foods shall execute a Release, in the form attached hereto as Exhibit A and incorporated herein by reference, to be executed at the time of the execution and delivery of this Agreement.

3. Undertakings by Nutrition for Life

3.1 Nutrition for Life shall not object to, oppose or seek to cancel, based on the grounds set forth in 15 U.S.C. §1052(a) through (e) or in similar laws or regulations regulating the use of trademarks in jurisdictions worldwide, Dressler Foods' use and/or registration of the SOYGOOD-Formative Mark SOYGOOD, including but not limited to, those identified in paragraph 1.1 for the above goods so stated.

3.2 Nutrition for Life shall not use and/or seek trademark registration of any SOYGOOD-Formative marks in connection with any goods or services, unless specifically consented to herein.

3.3 Without limiting the generality of the foregoing, Nutrition for Life may use and/or seek registration of the IT'SOY GOOD mark, provided, however, that Nutrition for Life does not use its IT'SOY GOOD mark in connection with the following:

- (a) Beverages of any kind;
- (b) Powder or mix intended to be used as or in beverages; and

DZD

- (c) Soy-based liquid beverage or powdered beverage base used as a milk substitute.

3.4 Furthermore, Nutrition for Life shall not use the IT'SOY GOOD mark except if Nutrition for Life is always identified as the source of the goods provided on any materials on which the IT'SOY GOOD mark appears.

3.5 Dressler Foods shall execute a release in the form attached hereto as Exhibit B and incorporated herein by reference, to be executed at the time of the execution and delivery of this Agreement.

3.6 Nutrition for Life agrees that it shall not cause or allow a SOYGOOD-Formative mark to appear on packaging or in advertising for any goods/products set forth or identified in Paragraph 3.3. The parties recognize the term IT'SOY GOOD may appear in product catalogs applicable to goods/products listed in Paragraph 1.2, but specifically agree it will not be made to appear that the IT'SOY GOOD is being used for any other goods/products.

4. General

4.1 Dressler Foods and Nutrition for Life agree that their use and/or registration of the marks in accordance with this Agreement is not likely to cause confusion, mistake or deception among consumers with respect to the origin of the parties' respective products.

4.2 It is the intent of this Agreement to avoid any likelihood of confusion, mistake or deception. If actual confusion, mistake or deception should occur, the parties agree to confer and cooperate in making such changes

as may be mutually agreeable to avoid such confusion, mistake or deception.

- 4.3 It is expressly understood that nothing in this Agreement shall be construed as an admission or acknowledgment on the part of Dressler Foods that Nutrition for Life may use or seek to register any SOYGOOD-Formative Mark other than as provided in this Agreement.
- 4.4 This Agreement shall continue to be effective unless and until Dressler Foods abandons all of its SOY GOOD-Formative Marks.
- 4.5 This Agreement shall have effect worldwide and shall govern the parties' worldwide use and/or registration of the SOYGOOD-Formative Marks identified herein.
- 4.6 This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.
- 4.7 This Agreement contains the entire agreement between the parties and supersedes all pre-existing agreements between them respecting its subject matter and shall not be varied, amended or supplemented except by a writing of subsequent or even date executed by both parties. No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver of consent given by a party on any occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion.
- 4.8 Each party hereto that is a corporation, and each person executing this Agreement on behalf of a corporation, represents and warrants that: (a)

such corporation is duly organized, validly authorized and in good standing, and possesses full power and authority to enter into and comply with the terms of this Agreement; (b) the execution, delivery and compliance with the terms of this Agreement have been duly and validly authorized by all requisite corporate acts and consents and do not contravene the terms of any other obligation to which the corporation is subject; (c) this Agreement, when effective, will constitute a legal, binding and valid obligation of such entity, enforceable in accordance with its terms; and (d) each party hereto will furnish to the other parties such evidence of such actions and consent, and such legal opinions with respect thereto, as any party may reasonably request.

4.9 The provisions of this Agreement are not intended to be for the benefit of any creditor or other person to whom any debt, liability or obligation is owed by (or who otherwise has any claim against) either party. No such creditor or other person shall obtain any rights under this agreement or shall, by reason of this Agreement, make any claim in respect to any debt, liability or obligation (or otherwise) against either party.

4.10 The parties agree that any breach of this Agreement will cause irreparable damage to the non-breaching party and that in the event of such breach the non-breaching party shall have, in addition to any and all remedies at law, the right to an injunction, specific performance and/or other equitable relief to prevent the violation of breaching party's obligations hereunder.

4.11 This Agreement may be executed in counterparts, which collectively shall constitute a single instrument.

This Agreement is conditioned upon the acceptance thereof by the U.S. Trademark Office in the examination of Dressler Foods' pending trademark application for SOYGOOD. The parties agree to continue to request suspension of the opposition until such time as the examiner approves it. In the event the examiner disapproves of the agreement despite best arguments, then the suspension of the opposition shall be removed and the opposition shall proceed.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the
above date.

DRESSLER FOODS, INC.

Dated: 1-8-02

By: David L. Dressler

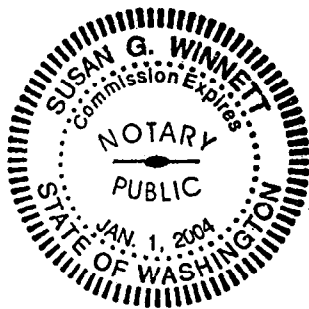
Name: David L. Dressler

Title: President

ACKNOWLEDGMENT

State of Washington,
County of Chittenden ss.

On the above date, personally appeared before me, David L. Dressler
and acknowledged to me that he is President of Dressler Foods, Inc.
and that he is authorized to execute the foregoing instrument, that he executed the
foregoing instrument as his own free act, and that the foregoing instrument was
executed pursuant to the bylaws of Dressler Foods, Inc.



Susan G. Winnett
Notary Public in and for the County of Chittenden

My commission expires: 1-1-04

NUTRITION FOR LIFE
INTERNATIONAL, INC.

Dated: 12/17/2009

By: David Bertrand
Name: DAVID BERTRAND
Title: PRESIDENT

ACKNOWLEDGMENT

State of TEXAS)
County of HARRIS) ss.

On the above date, personally appeared before me, DAVID BERTRAND,
to me known to be PRESIDENT of Nutrition for Life International, Inc., and
acknowledged to me that he/she executed the foregoing instrument on behalf of the
corporation as its free act and deed and pursuant to its bylaws.



SEAL

Dawn M. Rivera
Notary Public in and for the County of HARRIS
residing at: Tomball, TX

My commission expires: 10-30-03

EXHIBIT A

RELEASE

For and in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to it by Nutrition for Life International, Inc., a corporation organized and existing under the laws of the State of Texas, with its principal place of business at 9101 Jameel, Houston, Texas 77040 ("Nutrition for Life"), the receipt and adequacy of which are hereby acknowledged, the undersigned Dressler Foods, Inc., a corporation organized and existing under the laws of Washington, with its principal place of business at 184 Panorama Lane, Walla Walla, Washington 99362 ("Dressler Foods"), does hereby release and forever discharge Nutrition for Life, its agents, successors, assigns and other legal representatives, of and from all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands of every kind or character whatsoever, whether presently known or unknown, suspected or unsuspected, in law or in equity or otherwise, which Dressler Foods now has or which it or its successors hereafter can, shall or may have, by reason of or arising out of any matter, cause, acts, conduct, claim, event or thing whatsoever arising from or relating to Nutrition for Life's use and/or registration of the IT'SOY GOOD mark from the beginning of the world to the date hereof.

IN WITNESS WHEREOF, Dressler Foods, Inc. has caused this Release to be executed by its duly authorized agent.

DRESSLER FOODS, INC.

Dated: 1/8/02

By: David L. Dressler

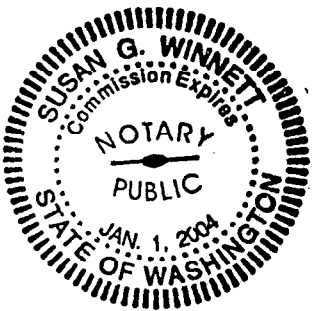
Name: David L. Dressler

Title: President

ACKNOWLEDGMENT

State of Washington,
County of Leahurst ss.

On the above date personally appeared before me, David L. Dressler and acknowledged to me that he is President of Dressler Foods, Inc. and that he is authorized to execute the foregoing instrument, that he executed the foregoing instrument as his own free act, and that the foregoing instrument was executed pursuant to the bylaws of Dressler Foods, Inc.



Susan G. Winnett
Notary Public in and for the County of Leahurst

My commission expires: 1-1-04

EXHIBIT B

RELEASE

For and in consideration of One Dollar (\$1.00) and other good and valuable consideration paid to it by Dressler Foods, Inc. a corporation organized and existing under the laws of Washington with its principal place of business at 184 Panorama Lane, Walla Walla, Washington 99362 ("Dressler Foods"), the receipt and adequacy of which are hereby acknowledged, the undersigned Nutrition for Life International, Inc., a corporation organized and existing under the laws of the State of Texas, with its principal place of business at 9101 Jameel, Houston, Texas 77040 ("Nutrition for Life"), does hereby release and forever discharge Dressler Foods, its agents, successors, assigns and other legal representatives, of and from all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, covenants, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands of every kind or character whatsoever, whether presently known or unknown, suspected or unsuspected, in law or in equity or otherwise, which Nutrition for Life now has or which it or its successors hereafter can, shall or may have, by reason of or arising out of any matter, cause, acts, conduct, claim, event or thing whatsoever arising from or relating to Dressler Foods' use and/or registration of the IT'SOY GOOD Mark from the beginning of the world to the date hereof.

IN WITNESS WHEREOF, Nutrition for Life International, Inc. has caused this
Release to be executed by its duly authorized agent.

NUTRITION FOR LIFE
INTERNATIONAL, INC.

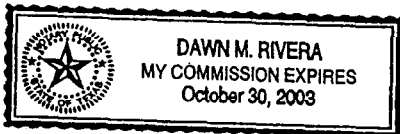
Dated: 12/17/2001

By: David Bertrand
Name: DAVID BERTRAND
Title: PRESIDENT

ACKNOWLEDGMENT

State of TEXAS)
County of HARRIS) ss.

On the above date personally appeared before me, DAVID BERTRAND,
to me known to be PRESIDENT of Nutrition for Life International, Inc., and
acknowledged to me that he/she executed the foregoing instrument on behalf of the
corporation as its free act and deed and pursuant to its bylaws.



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Dawn M. Rivera
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